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Bermuda

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Contents

		Paragraphs	Page
I.	Background information	1–3	3
II.	Constitutional, political and legal issues	4–14	3
III.	Budget	15–17	5
IV.	Hurricane	18	6
V.	Economy	19–34	6
	A. General	19–20	6
	B. Financial services	21–25	7
	C. Tourism	26–28	8
	D. Construction	29–32	9
	E. Transport and communications	33–35	9
VI.	Military issues	36–37	10
VII.	Social conditions	38–47	10
	A. General	38	10
	B. Labour	39	10
	C. Education	40–41	11

04-29396 (E) 030504

D. Public health 42–45 11
E. Crime 46–47 11
VIII. Relations with international organizations/arrangements 48–49 12
IX. Future political status of the Territory 50–59 12
A. Position of the administering Power 55–58 14
B. Consideration by the United Nations 59 15

I. Background information

1. Bermuda[1] is located in the western part of the Atlantic Ocean, about 917 kilometres east of the North Carolina coast of the United States of America. The Territory consists of 8 major islands and 130 smaller islands. The largest is Great Island, or Main Island. Hamilton, the capital, and St. George's are the two main towns.

2. Until recently, it was considered that Bermuda was discovered in 1503. Local historians now believe the Spanish navigator Juan de Bermúdez first spotted Bermuda in 1505. On the basis of the new historical evidence, the celebrations marking the 500th anniversary of the discovery of Bermuda, which had initially been scheduled for 2003, will be held in 2005.[2] In 1609, Bermuda was settled by a group of English colonists and in 1610, the first slaves were brought to work on the farms and to dive for pearls. In 1620, the first Parliament was held after the Crown granted the colony limited self-government. In 1968, Bermuda was granted internal self-government and a new Constitution. In 1995, a referendum was held on the question of independence. Of the 58.8 per cent of eligible voters who participated, which is a small number by Bermudian standards, 73.6 per cent voted against independence.

3. According to the 2000 census, Bermuda's population has grown by 6 per cent to 62,098 since the last census in 1991. The number of foreign-born inhabitants grew by 12 per cent and represented around 30 per cent of the population. The work force grew to 36,878, an 11 per cent rise over the decade. The inhabitants of African descent constituted 60 per cent of the population, while 40 per cent was of North American or European descent. The Territory is very densely populated (1,180 inhabitants per square kilometre). It is also on the list of countries with the highest urban population, as 100 per cent of its population lives in urban areas.

II. Constitutional, political and legal issues

4. Bermuda is a Non-Self-Governing Territory administered by the United Kingdom of Great Britain and Northern Ireland. The Constitution of Bermuda, adopted in 1968 and amended in 1973, 1979 and 1989, contains provisions relating to the protection of fundamental rights and freedoms of the individual. The Governor is appointed by the Queen and the Government of the United Kingdom, after consultations with the Prime Minister. The Governor is responsible for defence, external affairs, internal security and the police. Bermuda has a parliamentary system of government. The Government of Bermuda comprises a Governor, a Deputy Governor, a Cabinet and a bicameral legislature with a House of Assembly of 36 members directly elected for a five-year term and a Senate of 11 appointed members. Five members of the Senate are appointed by the Governor, on the advice of the Prime Minister, three on the advice of the leader of the opposition and three by the Governor at his discretion. The Territory maintains a 700-strong Defence Regiment; the adult male population is subject to military conscription, involving three years' part-time liability for weekly drills and an annual camp. It has a police force of approximately 450 full-time officers and several hundred part-time police reserves. The Governor of Bermuda, John Vereker, took office in April 2002.

5. Bermuda's law and legal system are based on English common law and principles of equity, English statute law in force since 1612 and Acts of the Bermuda Parliament passed since then. The judiciary is a separate body from the Government and its members are not elected but appointed on the advice of the Chief Justice. There are three courts presiding in Bermuda, namely, the Magistrates' Court, the Supreme Court and the Court of Appeal.

6. There are three main political parties in the Territory. The Progressive Labour Party (PLP) was the first party to be formed by the black population of Bermuda in 1963 to gain representation and power in a white-controlled political and economic system. The United Bermuda Party (UBP) was formed in 1964 by whites opposed to PLP policies. The National Liberal Party (NLP) seeks a middle ground. The Prime Minister is chosen from the majority party and heads a Cabinet of no more than 14 members of the legislature.

7. Bermuda voters in the elections or referendums must be 18 years of age. They must be Bermudian by birth or status, or non-Bermudian, long-term residents of Bermuda who are citizens of the British Commonwealth and have been registered to vote annually since 1979. Automatic citizenship applies to children born in Bermuda, except to those without either parent being Bermudian by birth or status.

8. The latest general election, held on 28 July 2003, brought victory to the Progressive Labour Party (PLP), which now occupies 22 seats in the House of Assembly. The United Bermuda Party (UBP) occupies the remaining 14 seats. This victory left PLP in power for a second term since it had first won election in 1998. The latest election saw a very high turnout of voters with 39,250 or 99.1 per cent of the eligible population participating. In addition, a record number of three candidates were running independently or on behalf of smaller parties.[3]

9. Two days after the elections and the Progressive Labour Party's return to power, 11 newly elected PLP Members of Parliament refused to serve under the former Prime Minister and said they wanted to use the opportunity under the Constitution to exercise their right as MPs to choose the Prime Minister. Under the Constitution, the Governor must select as Prime Minister the member of the House of Assembly who commands the support of the majority of members, namely, at least 19. Such a majority could not be realized with 11 of the 22 members of PLP against the candidature of the former Prime Minister. As a result of the crisis, the former leader of PLP resigned. The new Prime Minister is Alexandre Scott.[4]

10. The 2003 election was held under the new electoral system for the first time. As was reported in last year's working paper (A/AC.109/2003/13, paras. 12-14), the Boundaries Commission, which had been working since 2001, suggested changes in the mapping of the electoral constituencies in the Territory. The new system replaced 20 unequal dual-seat constituencies with 36 equally sized constituencies that send one person each to the House of Assembly. The new system also introduced a one-person, one-vote principle. The changes in the Constitution, including the Parliamentary Election Act 2003, were approved by the United Kingdom in June 2003. Although all political parties accepted the new electoral system, the opposition UBP claimed that the public had not been sufficiently informed of the changes.[5]

11. The issue of racial implications of the electoral reform, which had been raised at its earlier stages (A/AC.109/2003/13, para. 13), came to light again at the end of 2003. The Leader of the Opposition wrote an open letter to the Prime Minister in which he expressed the hope that a "code of principles" governing parliamentary behaviour could be worked out to avoid what he believed were PLP attempts to push race to the fore in the election campaign. He also hoped that the 2003 general election would be the last to be contested on racial lines on the island.[6]

12. In May 2002, the Overseas Territories Act came into force after having received royal assent in the United Kingdom. The Act provides British citizenship to the peoples of its Overseas Territories, including Bermudians. That law allows Bermudians to hold British passports and work anywhere in the European Union.

13. As was reported in last year's working paper (A/AC.109/2003/13, para. 11), the constitutional reform in Bermuda had reached a stage where the proposals for changes in the Constitution had been sent by the local Government to the United Kingdom for approval. At the same time, a petition was submitted by the UBP opposition claiming lack of broad-based consultations with the public on the electoral reform. As mentioned above (see para. 10), the changes in the Constitution with respect to electoral laws were approved by the United Kingdom in June 2003. Later in 2003, the public was invited by the Governor to comment on the procedure by which the Bermuda Constitution could be changed. Among the questions to be considered were the following: could parties other than Bermuda and the British Government initiate the constitutional change, does the Government or the whole Parliament set the process in motion, and is the two-thirds majority needed? Other issues included the role of the Senate and the need for a referendum.[7]

14. According to information provided by the administering Power, during the Overseas Territories Consultative Council meeting in December 2003 the British Legal Adviser noted that in Bermuda elections had taken place on the basis of single-member constituencies, following a judicial review brought by those opposed to the change. This, according to the Adviser, showed the importance of seeking the broadest possible local consensus to a constitutional change. Responding to this remark, the Prime Minister of Bermuda stated that the assistance of the Foreign and Commonwealth Office on the Constitution was much appreciated, but those behind the judicial review had received undue United Kingdom acknowledgement: they were not the loyal opposition, but representatives of a small non-governmental organization. According to the Prime Minister, the views of elected representatives should always take precedence. The invitation to the public in Bermuda to offer views on the mechanism for future constitutional change should have been made through the elected Government of Bermuda and not directly to the public from Government House.

III. Budget

15. The Budget of Bermuda for 2004-2005 was presented in February 2004 and will be detailed in next year's working paper.

16. With respect to 2003, according to the Minister of Finance, hurricane Fabian left a mark on the 2003-2004 budget. As a consequence of the storm's damage to infrastructure and public buildings and equipment, the projected current surplus of $25.3 million was reduced by some $10 million in order to cover uninsured costs to

the Government. The actual impact on the tourist sector owing to reduced revenue from hotel occupancy and airport taxes would be estimated at a later stage.

17. The estimated revenue for the fiscal year 2003-2004 was revised upwards to $666 million compared to the original estimate of $650 million. The major sources of revenue are payroll taxes, cruise passenger taxes, customs duties and land taxes. The expenditure in 2003-2004 is estimated at $643.2 million or $18.3 million higher than the last fiscal year.[8]

IV. Hurricane

18. In September 2003, Bermuda was hit by hurricane Fabian, which was the most powerful hurricane to hit the Territory in over 50 years. The hurricane ravaged Bermuda, causing massive damage to residential and commercial buildings, overhead power and telecommunication lines, infrastructure, foreshore and vegetation. According to Government estimates, the damage would be $160 million to $180 million. In particular, Bermuda's hospitality sector suffered substantial property damage to hotels, restaurants and golf courses. The hotel sector lost, albeit temporarily, some 20 per cent of its capacity. As a result there was a rise in temporary unemployment in this sector. The agricultural sector was also devastated by the hurricane with estimated losses of $2 million to $3 million. Insured losses were estimated at $300 million to $350 million. Although the damage across the Territory was widespread, the lessons learned from the storm confirmed that Bermuda was relatively well prepared for such a disaster. In particular, sturdy stone and concrete construction, which conforms to the British building codes and is unique to many Caribbean islands and the United States of America, proved to have excellent wind resistance. Besides, the sound economic situation, with a considerable revenue surplus and a strong insurance sector, seemed to be able to accommodate the shock.[9]

V. Economy

A. General

19. Bermuda has no natural resources, in the conventional sense, upon which to build a viable economy. It has historically capitalized on its location and scenic beauty and has developed a renowned tourist industry. Financial services, international business and tourism are the main economic sectors and account for the bulk of the Territory's foreign-exchange earnings. The 2000 census statistics have confirmed Bermuda's transition from a two-pillar economy based on tourism and international business to an economy based on offshore financial services with a tourism industry as a support. The public sector plays a large role in Bermuda's economy. More than 13 per cent of the workforce is either directly or indirectly employed by the Government. Manufacturing and agriculture exist on a limited scale and therefore contribute little to the economy of Bermuda. The local manufacturing sector includes printing, fish processing, ship repair and tourist-related crafts, as well as the manufacture of paint. Agricultural activity is constrained by the small amount of land available for farming. Some production of vegetables and citrus fruits is undertaken and flowers are grown for export.

Construction is becoming a more significant sector, employing 6.9 per cent of the labour force, compared to 3.2 per cent in manufacturing. Bermuda imports 90 per cent of its food requirements. Bermuda's openness to the world economy and strong links to the United States economy largely determine its pattern of economic growth.

20. Per capita gross domestic product (GDP) in Bermuda is one of the highest in the world. According to 2003 data from the Organisation for Economic Cooperation and Development (OECD), it reached nearly $61,000. At the same time, Bermuda's high cost of living relegates it to ninth place on the list of countries with the highest purchasing power. According to the Minister of Finance, in 2003 the GDP grew at the rate of 2.5 per cent compared to the 2.0 per cent growth in 2002. At the same time, the average rate of consumer price inflation was 3.2 per cent. The decline in the overall employment level was 0.4 per cent, reflecting the loss of 135 jobs.[10]

B. Financial services

21. Until 2003, foreign banks had not been allowed to operate in Bermuda, creating a quasi-monopoly for local banks in handling lucrative international business operations for offshore clients. There is no central bank in Bermuda. Instead, the Bermuda Monetary Authority (BMA) is the regulatory authority of banks and trust companies. Bermuda is one of the world's leading offshore financial and business centres and the third largest insurance market.

22. In 2003, the Government of Bermuda removed a decades-old rule that Bermudians must own 60 per cent of the capital of companies doing business in the Territory. This opened the way for a deal under which the Bank of Bermuda was purchased by the British HSBC Bank for $1.3 billion. According to the Prime Minister, the acquisition will help Bermuda in several ways. Having the HSBC Bank as a partner can help the Territory in dealing with such challenges as international regulations and revitalizing the tourist industry and will expand the amount of credit available for local businesses. At the same time, the rule limiting foreign ownership in Bermudian business will not be relaxed any further. According to international observers, the sale of the Bank of Bermuda has not undermined confidence in the Territory's financial sector.[11]

23. Bermuda is the world's leading domicile for captive insurance companies set up to insure or reinsure the risk of their parent companies. During the reporting period, the international business sector, including insurance, reinsurance and mutual fund management and administration, continued to dominate the economy. Foreign exchange earnings generated by the wages of professionals working in the industry rose by $49 million to a record total of $541 million in the first six months of 2003. About 13,500 registered companies generated nearly 16 per cent of GDP compared to 14.5 per cent three years ago. According to the Bermuda Monetary Authority (BMA), in 2003 around 60 new captive insurance companies were formed, bringing the total number to 1,157 registered companies.[12]

24. As was reported in previous working papers (A/AC.109/2001/9, paras. 39-41, and A/AC.109/2002/15, para. 24), Bermuda's international financial system has come under scrutiny by OECD. Owing to the fact that Bermuda agreed to bring its practices up to international standards, it was not included on the lists of uncooperative jurisdictions.

25. At present, Bermuda's financial sector is well regulated. The Bermuda Monetary Authority (BMA) has vast powers, including the power to conduct on-site supervisory review for long-term Bermuda insurers. According to the Minister of Finance, the International Monetary Fund (IMF) conducted an assessment of Bermuda's financial services in March 2003. The IMF report indicated the need for further change and enhancement of the supervisory and regulatory processes in the Territory. The Government would continue to meet the challenge of striking a balance between effective regulation and sustaining a competitive business environment. To that end, the Government had resorted to economic diplomacy by establishing a network of advisers in key locations, such as the United States and the United Kingdom.[13]

C. Tourism

26. Bermuda's tourism sector has continued its steady decline that began in the 1980s. The decline is mostly attributed to increased competition from cheaper destinations and the rapid growth of cruise ship tourism as a rival to stopover tourism throughout the Caribbean. The stopover subsection, whose clients tend to spend more money in the Territory, is losing market share to the cruise ship subsection, whose contribution to the economy of the Territory is minimal. In addition, the fact that 80 per cent of stopover visitors are from the United States makes Bermuda vulnerable to economic fluctuations in that country. Travel industry experts pointed out high prices, costly transportation, lack of direct flights from continental Europe and a scarcity of high-end entertainment among the problems facing the sector. The damage caused by hurricane Fabian in September 2003 had additional short-term negative effects on the tourist industry (see para. 18 above).

27. According to the Department of Tourism, airborne tourism to Bermuda fell from 500,000 visitors in 1980 to 256,000 in 2003. That number is 10 per cent lower than in 2002. Cruise ships continued to bring the majority of visitors to Bermuda. A total of 116,821 passengers disembarked from cruise ships. The negative side of the rise in cruise ship arrivals is the often lower hotel occupancy rates, which are offset by the higher expenditures in transport, sightseeing and entertainment. In the future, the Government intends to put emphasis on air tourism.[14]

28. During the reporting period, the Government continued to take steps in order to alleviate the situation and to re-energize the tourist sector. The Government continued to undertake an active promotional campaign in the United States and the United Kingdom. New air service was introduced from London, Philadelphia, Fort Lauderdale, Orlando, Baltimore, Chicago, Boston and New York. The Jetblue airline became the second budget airline to the Territory. British Airways added a fifth weekly flight to the Territory, boosting its capacity by 14 per cent. The Government was also working with several British tourist operators, aiming to boost the number of visitors from the United Kingdom by 5,000 in 2004. Specifically targeted are luxury operators attracting visitors with an income of at least £60,000 a year. To improve the image of Bermuda in the British market, the Government will launch a £500,000 consumer advertising campaign.[15]

D. Construction

29. The construction industry of Bermuda benefits from both private and public sector investment. During the reporting period, this tendency continued. The first three quarters of 2003 showed strong performance with more than $120 million worth of work in place.

30. According to the *Quarterly Bulletin of Statistics*, new projects worth more than $119 million were started during the first nine months of 2003, compared to $149 million in the same period in 2002. Residential construction continued to be the largest contributor to the industry with $51.6 million worth of completed construction through the first nine months of the year compared to $61.3 million in the first nine months of 2002. Commercial buildings have accounted for as little as $50.5 million during the same period. This is in contrast to the years 2000 and 2001, when commercial building led the way with $113.8 million worth of construction compared to $83.3 million of residential construction over the two-year period.

31. Tourism-related construction accounted for just $3.4 million, which is a noticeable change from the construction boom related to the Hotel Concessions Act that saw $15.6 million worth of work completed in the same period in 2002 and $18.2 million in 2001. However, major renovations and repairs necessitated by damage from hurricane Fabian to hotels, homes and commercial properties are likely to show higher performance of the industry for the fourth quarter of 2003.[16]

32. Despite the strength in the construction industry, there is a problem with housing in the Territory. The construction of new homes is unable to keep pace with the need for housing. Besides, the price of homes is going up steadily, leaving part of the population in a disadvantaged position. The proliferation of international business contributes to the growing demand for housing. The price of an average house rose by 30 per cent in the past three years and is now $850,000, which is 17 times the average annual income. According to the Department of Statistics, in 2000 home ownership among black Bermudians, who make up 60 per cent of the population, was only 49 per cent, compared to 62 per cent among the white population.[17]

E. Transport and communications

33. Bermuda has a network of about 225 kilometres of paved public roads and another 400 kilometres of private roads. The number of cars licensed to operate on Bermuda's roads has increased by 70 per cent since 1980. During 2002, the Government discussed reforms on the Motor Car Act, such as increasing the sizes of vehicles allowed, changes in the purchase of vehicle regulations and driving licence system improvements. The bill was passed in June 2002.[18]

34. Airport services are reported to have improved considerably in recent years. There are regular and well-established services between Bermuda and the United States and to the United Kingdom. Contrary to the popular assumption, there are no scheduled air or sea services between Bermuda and the Caribbean, which means that all imports and visitors to Bermuda from the Caribbean must come via the United States or Canada. Consequently, all visitors must have appropriate visas to come via those countries.[19]

35. The Bermuda International Airport was designated as the "Number One Airport in North America" by the Global Monitor 2002 and 2003 surveys. The Bermuda Airport was affected by hurricane Fabian, which caused an estimated $6.5 million in damage to airport buildings and facilities.[20]

VI. Military issues

36. As reported in previous working papers (A/AC.109/2000/13, paras. 17-21; A/AC.109/2002/15, paras. 35 and 36; and A/AC.109/2002/13, paras. 40 and 41), after long confrontation and negotiations with the former occupants of the military base in the Territory, in 2002 the Government of Bermuda agreed to receive $11 million from the United States for the maintenance of Longbird Bridge and for the clean-up as a final settlement. However, environmental concerns remain under discussion in the Territory.

37. During the period under review, the fate of the former bases remained undecided. There are two main options under consideration, namely, to use the 230 acres of land for the construction of much-needed housing, or to turn the base into a museum and a tourist attraction. Bermuda's military legacy includes 100 forts at 70 sites, as well as one of the world's largest and most varied collections of British guns dating from the early seventeenth to the twentieth century. Some of the oldest objects were designated a world heritage by the United Nations Educational, Scientific and Cultural Organization (UNESCO).[21]

VII. Social conditions

A. General

38. As was reported in last year's working paper (A/AC.109/2003/13, paras. 42 and 43), while Bermuda's GDP is among the highest in the world, redressing inequalities in wealth on the island has been a priority for the current Government. According to the 2000 census, income inequalities based on race, gender and nationality have persisted.

B. Labour

39. With near-full employment and full pension coverage for Bermudians, most labour issues concern the quality of work available and the effect of foreign workers on the Bermuda labour market. As was reported in last year's working paper (A/AC.109/2003/13, para. 44), in 2001 the Government set a new policy that limits work permits for non-key personnel at Bermuda-based companies to six or nine years. During the period under review, the new policy that will start to affect companies in 2007 and onward, continued to generate discussion. In particular, the definition of non-key and key employees appears to be open to interpretation. The policy might also adversely affect the possibilities of career development for young and mid-level professionals.[22]

C. Education

40. Education in Bermuda is compulsory for all children from 5 to 16 years of age and is free in government schools. The literacy rate is high: 98 per cent of all males and 99 per cent of females 15 years of age and over can read and write. There are 39 State schools — 30 primary, 5 middle, 2 secondary and 2 special schools. There are some private schools as well. There are no degree-conferring universities in Bermuda. The Government awards a number of scholarships each year to young Bermudians accepted at universities in the United States, Canada and the United Kingdom. Scholarships are also awarded by local banks, principal law firms and Bermuda-based international companies. Under the Government's National Education Guarantee Scheme, begun in 1994, no Bermudian student with university potential is denied an opportunity for further education owing to a lack of funds.

41. Bermuda considers the high level of education of its inhabitants to be a major component of its comparative advantage relative to other offshore centres. According to the 2000 census, Bermuda residents are better educated than in 1991, with 20 per cent of residents holding university degrees. The census also revealed a serious disparity between white students going to private schools (three quarters) and the black students attending the government educational system.

D. Public health

42. Medical care is provided by private practitioners and three government health clinics. Fees are charged for hospital care and medical insurance is compulsory for all workers. A hospital levy covers the cost of services rendered by the hospitals to children under 16 years of age. Indigent persons over 65 years of age pay 20 per cent of hospital costs. According to the Health Insurance Association of Bermuda, the cost of health care has increased 100 per cent over the past decade owing to greater technology, an ageing population and more demanding patients.

43. At the end of 2002, doctors and health insurers reached an agreement for a new fee coding system. That agreement ends a dispute between insurers and doctors about how much the insurance should cover and on the methods of payment.[23]

44. According to *The Economist*, Bermuda ranks sixth in the world for the incidence of AIDS.

45. According to the survey conducted in 2003, two thirds of Bermudians believe that the Territory's health care is either good or excellent, and one third considers it to be fair.[24]

E. Crime

46. Local press reports during 2003 recorded various criminal activities, including violent and drug-related crimes. According to the Home Affairs Minister, Bermuda took steps to strengthen its police services in order to deal with an upsurge of crime in the Territory. The size of the police force would be increased by 11 officers to a total of 450 policemen. In November 2003, the Police Commissioner reported that during the past year the police had made 1,300 seizures of drugs with a street value of $44 million and 800 arrests. During the reporting period, the Government

announced a gun amnesty that, by December 2003, had brought in around 20 items of illegal weapons, including an M-72 light anti-tank weapon rocket-launcher casing, a 0.32-calibre Smith and Wesson revolver, a 0.25-calibre handgun and 179 rounds of assorted ammunition.

47. The Bermuda maximum security prison with a total capacity of 208 prisoners is overcrowded. At the end of 2003, the Home Affairs Minister took a decision to move a number of prisoners to a different facility bringing the prison population in the main prison below the 200 mark.[25]

VIII. Relations with international organizations/arrangements

48. As was reported previously (A/AC.109/2002/15, para. 63), Bermuda has observer status in the Caribbean Community (CARICOM) and Common Market. Recently, it wanted to become an associate member of CARICOM. In 2002, the British Government approved the decision on condition that it would not interfere with external relations, defence or security. According to press reports, the Prime Minister said, "We have long desired to strengthen links between Bermuda and the islands of the Caribbean. We already have formal and informal links and share many similarities with the Caribbean".[26] However, the opposition UBP opposed the stance because of the economic implications of becoming a full member of CARICOM. The UBP leader pointed out that Bermuda had cultural and social ties with the Caribbean and they were good links to have; Bermudians did not need CARICOM to strengthen those ties. He said that Bermuda's interests were more with the United States and the European Union and less with the Caribbean. The debate will move to Bermuda's Parliament when it discusses the issue in 2003.

49. In July 2003, Bermuda formally joined the Caribbean Community as an associate (non-voting) member. Associate membership will stimulate direct trade between Bermuda and Caribbean countries. However, Bermuda's associate membership specifically excludes the free movement of Caribbean nationals to Bermuda, and Bermuda will not join the Caribbean Free Trade Association (CARIFTA) or the Free Trade Area of the Americas (FTAA). Membership of the Caribbean Community will cost Bermuda about $90,000 a year.[27]

IX. Future political status of the Territory

50. The discussion of the future status of Bermuda during the reporting period revolved around the degree of self-government under the Constitution and the responsibility of the ruling party for the decision on the change of status of the Territory. At present, Bermuda enjoys a wider degree of self-government than other British Territories. For example, under the Bermuda Constitution the responsibility for the financial service industry, unlike in other British Territories, lies with the elected Government. At the same time, the role of the Governor and the extent of United Kingdom involvement in the local affairs remains an issue under discussion. During the meeting of the Overseas Territories Consultative Council in December 2003, the Prime Minister of the Territory acknowledged that the "Bermuda Model" had much to recommend it, but it was not problem-free. He considered that the reference to good government, in the congratulatory letter on his appointment from the Parliamentary Under Secretary of State, had taken on a new meaning and led

him to question who was really in charge. He had been surprised to learn that in some Territories Governors still chaired the Executive Council. According to the Prime Minister, Governors had no place in a forum of elected representatives. For the same reason, he had argued strongly against the presence of Governors at the Overseas Territories Consultative Council meeting, as had his predecessor, but they were present. His colleagues should know that the Governor still had more power than Bermudians would like.

51. Another incident that stirred the discussion of the United Kingdom's role in the Territory was the appointment of the new Chief Justice. At the end of 2003, the United Kingdom appointed an English Chief Justice recommended by the Governor of Bermuda rather than a Bermudian candidate supported by the Prime Minister of Bermuda. The Prime Minister took a public stand on the issue, saying that when the United Kingdom ignored the views of the elected Government, that showed that there was no real partnership between London and the Territory. The opposition United Bermuda Party supported the Governor's candidate.[28] Referring to the problem of appointing a new Chief Justice in Bermuda during the Overseas Territories Consultative Council meeting in December 2003, the Prime Minister said that for the past 35 years the Prime Minister's advice had been heeded, but not on that occasion. Bermuda wanted real consultation, otherwise the partnership was hollow. The Prime Minister turned to the issue of the status of the Territory, saying that "no one in Bermuda wanted independence unless pushed: independence was an aspiration, but not too fast". The way that the relationship was being managed did not put the Prime Minister of Bermuda in charge as might be expected and, unless he was mistaken, it seemed that the United Kingdom wanted to "claw back over".[29]

52. The discussion of the independence option is not new for Bermuda. The Progressive Labour Party (PLP), which first came to power in 1998 and was returned to office by the July 2003 elections, advocated independence as a distant goal in its party programme. It is the position of the PLP leadership that by electing the party to power, the people of Bermuda gave their support to the PLP programme as a whole, including the transition to independence. The opposition UBP Party, at the same time, insists that a referendum should be taken on such an important question. The former Prime Minister maintained that PLP would not move towards independence during the Party's first term in office.

53. During the Overseas Territories Consultative Council meeting in December 2003, the Parliamentary Under Secretary stated that the United Kingdom's position on independence remained as set out in the White Paper, namely, the Overseas Territories were free to pursue it should they so wish. He also said that the "Bermuda model" was a pre-independence constitution. In response, the Prime Minister of Bermuda noted that he had never heard Bermuda's Constitution described as a pre-independence constitution before. He disagreed with the United Kingdom Minister about the idea of a referendum for proposed change. It had always been his party's position that independence should come about after an election, not a referendum. According to the Prime Minister, the United Kingdom would have to respect the local Government of the day not a minority group which might have money but no electoral support.[29]

54. At the end of 2003, following the controversy surrounding the appointment of the Chief Justice, the issue of independence was revived. In December 2003, the Prime Minister remarked that the United Kingdom's decision concerning the Chief

Justice had not brought the question of independence as a priority agenda of his Government. However, at the beginning of 2004, independence became an issue of discussion in the press. The Prime Minister called for a wide debate. The need to start the process of examining the issue of independence seriously received support from the leaders of the major parties.[30]

A. Position of the administering Power

55. In his statement at the 2nd meeting of the Fourth Committee, on 6 October 2003, at the fifty-eighth session of the General Assembly (see A/C.4/58/SR.2), the representative of the United Kingdom said that his Government welcomed the opportunity, as an administering Power, to bring the Committee's attention to a number of significant developments that had taken place during the year. Following the adoption in 2002 of the British Overseas Territories Act, which granted all citizens of those Territories full British citizenship, the right of abode in the United Kingdom and freedom of movement within the European Union, over 14,000 passports had been issued by August 2003. As for environmental management in the Overseas Territories, his Government was working closely with the Territories in order to fulfil the commitments it had entered into under multilateral agreements and to support the efforts of the Territories themselves to protect and improve their environment.

56. With respect to the constitutional reviews, discussions were under way in the Cayman Islands, the Falkland Islands, Gibraltar, Montserrat and the Turks and Caicos Islands. The authorities of Anguilla had set up a committee to canvas views from the population at large, and a locally appointed review commission was expected to be established shortly in the British Virgin Islands. Talks with St. Helena had also started and were the furthest advanced, whereas discussions with Gibraltar had yet to commence. In terms of the Committee's specific interests, two years into the United Nations Second International Decade for the Eradication of Colonialism, perhaps the most significant development had been the decolonization seminar which had been held in Anguilla from 20 to 22 May 2003, since it was the first time that the seminar had been held in a British Non-Self-Governing Territory. The choice of venue and the focus of the seminar had meant that several chief ministers and their equivalents, as well as opposition leaders and civil society representatives, had been able to attend. The representative of the United Kingdom said that the seminar had shown the extent to which many of the British Overseas Territories had dynamic and advanced economies, which already benefited from a high degree of self-government.

57. As seen from London, the representative of the United Kingdom said his Government had the impression that there was no strong desire in its Territories to choose the path of independence, even though his Government had made it clear that it would give every encouragement if they chose to do so, where independence was an option. The key, therefore, as long as the Territories chose to retain their link with the United Kingdom, would be to try to reconcile their desire for ever-greater autonomy and self-government with the United Kingdom's responsibility to ensure good governance, protect the impartiality of the public service and the independence of the judiciary, and to ensure compliance with relevant international obligations.

58. In his closing remarks during the Overseas Territories Consultative Council meeting held in London from 8 to 10 December 2003, referring to the role of the Governors and constitutional reform, the Parliamentary Under Secretary of State said that it was based on the principle of partnership. According to the Under Secretary, the concept of free association advanced by the United Nations Special Committee of 24 would not be inconsistent with that if it meant mutual acceptance by both sides, because the United Kingdom Government had responsibilities to protect. But if it meant, as he sensed some territorial Governments were arguing, that some Territories would draw up their own constitutions free of outside interference, the United Kingdom would not agree with that. The Under Secretary went on to add that his Government valued its relationship with the Territories. It would not wish to force them into independence, although it would respond positively, where that would be an option (i.e., not Gibraltar) if that was the clear and constitutionally expressed wish of the people. The United Kingdom respected the fact that for some Territories that might be the long-term objective. He stressed, however, that while the Territories retained a link with the United Kingdom, their governance should be in partnership with it.[31]

B. Consideration by the United Nations

59. On 9 December 2003, the General Assembly adopted resolutions 58/108 A and B without a vote; section III of resolution 58/108 B is specifically devoted to Bermuda.

Notes

[1] The information contained in the present working paper has been derived from published sources, including Internet sites.

[2] *The Royal Gazette*, 12 October 2002.

[3] *The Royal Gazette*, 26 June, 1, 25 and 30 July 2003; http://www.bermuda-online.org/bdagovt.htm.

[4] BBC Monitoring Newsfile, 26 July 2003.

[5] *The Royal Gazette*, 16 May, 5 June, 4 November 2003; BBC News, 23 June 2003.

[6] BBC Monitoring Americas, 4 December 2003.

[7] *The Royal Gazette*, 4 November 2003.

[8] *Bermuda Sun*, 20 February 2004.

[9] www.ananova.com, 5 and 6 September 2003; BBC News, 7 September 2003; http://news.bbc.co.uk, *The Royal Gazette*, 9 September 2003, 20 January 2004; National Underwriter, 22 September 2003; Business Insurance, 29 September and 17 November 2003; *Bermuda Sun*, 20 February 2004.

[10] *Bermuda Sun*, 20 February 2004; *Financial Times*, 9 March 2004.

[11] www.eiu.com; www.bankofbermuda.com; *The Independent*, 29 October 2003; *South China Morning Post*, 3 November 2003; International Money Marketing, November 2003; *Financial Times*, 9 March 2004.

[12] *Financial Times*, 9 March 2004; *Business Insurance*, 15 March 2004.

[13] *Bermuda Sun*, 20 February 2004.

[14] Ibid., 12 December 2003.

[15] *Travel Trade Gazette*, 17 November 2003; *Bermuda Sun*, 9 January 2004.

[16] *The Royal Gazette*, 30 January 2004.

[17] *Financial Times*, 9 March 2004.

[18] *The Royal Gazette*, 17 July 2002.

[19] Bermuda Online, 11 March 2003; http://www.bermuda-online.org/bdagovt.htm; *The Royal Gazette*, 6 February 2003.

[20] Bermuda Online, 11 March 2003, http://bermuda-online.org/airport.htm.

[21] Bermuda Online, 11 March 2003, http://bermuda-online.org/airport.htm, Planet Tark, 12 March 2003, www.planetark.com; *Financial Times*, 9 March 2004; Reuters, 12 March 2004.

[22] *Business Insurance*, 17 November 2003.

[23] *The Royal Gazette*, 3 December 2002.

[24] *Bermuda Sun*, 1 September 2004.

[25] BBC Monitoring America, 13, 25 and 27 November; 9 and 22 December 2003.

[26] *Financial Times*, 22 November 2002.

[27] www.bermuda-online.org/bdagovt.htm.

[28] BBC Monitoring Americas, 2 and 20 December 2003.

[29] The Fifth Overseas Territories Consultative Council, *Report of the Proceedings*, 8-10 December 2003.

[30] BBC Monitoring Americas, 23 December 2003; *Bermuda Sun*, 9 and 16 January, 24 February, 2 and 3 March 2004; *The New York Times*, 2 March 2004.

[31] The Fifth Overseas Territories Consultative Council, *Report of the Proceedings*, 8-10 December 2003, annex F, Closing Remarks by Mr. Rammell.